

Final Order Denying Refund Number: 04-20210059
Sales Tax
For the Tax Year 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this final determination.

HOLDING

Mississippi Resident was not entitled to a refund of Indiana sales tax because he purchased a motor vehicle at a dealership's business location in Indiana and took possession of the vehicle in Indiana. The transaction was an Indiana sale subject to Indiana sales tax.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-2-3; IC § 6-2.5-4-1; IC § 6-2.5-5-24; IC § 6-2.5-13-1; *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *United States v. McFerrin*, 570 F.3d 672 (5th Cir. 2009); [45 IAC 2.2-2-1](#); [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#); Sales Tax Information Bulletin 28S (May 2019); Sales Tax Information Bulletin 72 (June 2019); Sales Tax Information Bulletin 72 (June 2020), Sales Tax Information Bulletin 84 (August 2014). Sales Tax Information Bulletin 84 (July 2020).

Taxpayer protests the refund denial of sales tax which was collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an individual currently residing in Mississippi. In February 2021, Taxpayer purchased a motor vehicle at an Indiana dealership business location ("Dealership"). Dealership collected sales tax. Taxpayer took possession of the vehicle at the Dealership's business location in Indiana and drove back to his home in Mississippi. Taxpayer subsequently titled and registered the vehicle in Mississippi.

In March 2021, Taxpayer filed a Form GA-110L, Claim for Refund, requesting a refund of \$1,141.25. Upon initial review, the Indiana Department of Revenue ("Department") denied Taxpayer's refund claim. The Department explained in part:

All sales of motor vehicles purchased in Indiana are subject to Indiana sales [] tax. This includes sales where the [purchaser] intends to immediately register, license, and/or title the motor vehicle for use in another state.

Taxpayer protested the refund denial, providing a copy of his State of Mississippi Road and Bridge Privilege Tax and Registration Receipt ("Receipt") to support his protest. Taxpayer further requested that the Department make the final determination without a hearing. This final determination results. Further facts will be provided, as necessary.

I. Sales Tax - Refund.

DISCUSSION

Taxpayer requested the refund of sales tax paid to Dealership, stating, in part, the following:

I [] purchases a [vehicle] from [Dealership in] Indiana. Upon purchasing the vehicle, . . . the sales tax in the amount of \$1,141.25 [was] collected at purchase . . . Mississippi is the state where the vehicle is registered and titled. . . . Mississippi and Indiana are not reciprocal states; therefore, Mississippi does not recognize that Indiana collected sales tax on their/my behalf. I have now paid double sales tax (use tax) on the vehicle to get it registered and titled in Mississippi. . . .

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in

Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible person property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser at a business location of the seller [in Indiana]" IC § 6-2.5-13-1(d)(1). The purchaser in general "shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction." IC § 6-2.5-2-1(b). The retail merchant shall collect the tax as agent for the state. *Id.*

In addition, "Tax credits are a matter of legislative grace" and "are only allowed as clearly provided for by statute, and are narrowly construed." *United States v. McFerrin*, 570 F.3d 672, 675 (5th Cir. 2009) (citing *Stinson Estate v. United States*, 214 F.3d 846, 848 (7th Cir. 2000)). That is, a statute which provides a tax credit or exemption is strictly construed against the taxpayer. *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 97 (Ind. Ct. App. 1974). "[W]here such an exemption is claimed, the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Id.* at 101 (internal citations omitted).

One example relevant to this case is the change of the Indiana sales tax rate concerning sales of motor vehicles to out-of-state purchasers. That is, beginning July 1, 2014, Indiana sales "tax rate on a motor vehicle that a purchaser intends to: (1) transport to a destination outside Indiana within thirty (30) days after delivery; and (2) title or register for use in another state or country[] is **the rate of that state or country (excluding any locally imposed tax rates)** as certified by the seller and purchaser in an affidavit" IC § 6-2.5-2-3(b). (**Emphasis added**).

In this case, Taxpayer, referencing his Receipt, contended that the State of Indiana should have refunded him the Indiana sales tax. Upon review, however, the Department is not able to agree. Specifically, in this instance, Taxpayer came to Indiana to purchase the motor vehicle from the Indiana Dealership. Taxpayer accepted the delivery and took possession of the vehicle at the Indiana Dealership. As such, the transaction in question occurred in Indiana - was an Indiana sale - subject to Indiana sales tax pursuant to Indiana tax law. The transaction did not qualify for the interstate commerce exemption under IC § 6-2.5-5-24(b) and there is no reciprocity between Indiana and Mississippi on motor vehicle sales. See also [45 IAC 2.2-5-53](#); [45 IAC 2.2-5-54](#) and Sales Tax Information Bulletin 28S (May 2019), 20190626 Ind. Reg. 045190314NRA. *But cf.* Sales Tax Information Bulletin 72 (June 2019), 20190626 Ind. Reg. 045190315NRA and Sales Tax Information Bulletin 72 (June 2020), 20200729 Ind. Reg. 045200399NRA (discussing that purchases of recreational vehicles and cargo trailers by nonresidents are exempt from Indiana sales tax if the purchaser's state of registration offers similar treatment to Indiana purchasers of recreational vehicles and cargo trailers).

As mentioned earlier, "tax credits" are a matter of legislative grace and are "only allowed as clearly provided for by statute, and are narrowly construed." *McFerrin*, 570 F.3d at 675. In this instance, IC § 6-2.5-2-3(b) specifically states "the state gross retail **tax rate** on a motor vehicle that a purchaser intends to: (1) transport to a destination outside Indiana within thirty (30) days after delivery; and (2) title or register for use in another state . . . **is the rate of that state . . .**" (**Emphasis added**). The statutory language of IC § 6-2.5-2-3(b) is plain and clear; the Indiana legislators intended to apply "the tax rate of that state" on qualified motor vehicles and "the tax rate of that state" only. See also Sales Tax Information Bulletin 84 (August 2014), 20140827 Ind. Reg. 045140329NRA and Sales Tax Information Bulletin 84 (July 2020), 20200826 Ind. Reg. 045200440NRA. While applicable Indiana exemptions outlined under [IC 6-2.5-5](#) remain available to out-of-state purchasers, the Indiana legislators did not offer the out-of-state purchasers any statutory exemptions or tax credits provided by their home states. Indiana is not precluded from taxing Indiana sales at the Indiana rate. Without the statutory authority, the Department must decline Taxpayer's invitation.

In short, Taxpayer's vehicle purchase was an Indiana retail transaction subject to Indiana sales tax. The Indiana Dealership properly collected and remitted the Indiana sales tax to Indiana. Taxpayer is not entitled to the refund of the Indiana sales tax pursuant to Indiana law.

FINDING

Taxpayer's protest is respectfully denied.

June 28, 2021

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